

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT OF MARYLAND

-----x
COSTAR REALTY INFORMATION, :
INC, et als, :
Plaintiffs :
:
vs : Civil Action: AW-08-0663
:
:
MARK FIELD, et als, :
Defendants. :
-----x

Friday, February 27, 2009
Greenbelt, Maryland

The above-entitled action came on for a
Rearraignment Hearing Proceeding before the HONORABLE
ALEXANDER WILLIAMS, Jr., United States District Judge,
in courtroom 4B, commencing at 11:30 a.m.

APPEARANCES:

On behalf of the Plaintiffs:

WILLIAM SAUERS, Esquire
SANYA SARICH, Esquire

On behalf of the Defendant by Telephone:

MARY OLGA LOVETT, Esquire
SIMEON BRIER, Esquire

Tracy Rae Dunlap, RPR, CRR (301) 344-3912
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

	<u>Page</u>
Reporter's Certificate	51

1 THE CLERK: This case now pending before the
2 court is AW-08-0663; CoStar Realty Information, Inc
3 versus Mark Field, et al. The matter now comes before
4 the court for motions hearing.

5 THE COURT: First, those for plaintiffs.

6 MR. SAUERS: William Sauers and Sanya Sarich from
7 Crowell and Moring.

8 THE COURT: All right. Now let's get the
9 identification of those on the line.

10 MS. LOVETT: Good morning, Your Honor. This is
11 Mary Olga Lovett with Greenberg Traurig, and I'm here on
12 behalf of Russ Gressett.

13 THE COURT: And you're calling from where?

14 MS. LOVETT: I'm calling from Texas, Your Honor,
15 Marshall, Texas.

16 THE COURT: All right. Thank you.

17 MS. LOVETT: Thank you, Judge.

18 MR. BRIER: Good morning, Your Honor. Simeon
19 Brier on behalf of the defendant Lawson Valuation Group,
20 Incorporated, and I am calling from West Palm Beach,
21 Florida. I appreciate you allowing us to attend by
22 phone.

23 MS. LOVETT: Indeed, Judge. Thank you.

24 THE COURT: No problem. I've had a chance to
25 look at the two motions by the defendants, and I want to

1 give both sides the opportunity to articulate their
2 positions a little more. And let's see. Who wants to
3 go first?

4 MS. LOVETT: I will defer to Mr. Brier.

5 MR. BRIER: That's fine, Your Honor.

6 THE COURT: All right. Mr. Brier. I may have
7 some questions as you go, but we will listen to you and
8 then we will have the plaintiffs respond, and you can
9 get back with a reply -- both of you can reply. All
10 right. Yes.

11 MR. BRIER: Sure, Your Honor. Your Honor,
12 without forcing the court to listen to a regurgitation
13 of the pleadings in the matter. Obviously, my client is
14 a Florida corporation, a closely held Florida
15 corporation operating in Palm Beach County, Florida that
16 performs real property valuations and appraisals.
17 Pursuant to a declaration that was filed with the court
18 on behalf of Douglas Lawson, who is one of the
19 principals of the company, Lawson Valuation has never
20 done any business in the state of Maryland. They do not
21 have any operations or subsidiaries in Maryland. They
22 have never owned or rented any real property or
23 conducted business in Maryland, or made any sales, or
24 engaged in business in Maryland. The issues that have
25 been raised and framed by the Motion to Dismiss, the

1 supporting memorandum of law, as well as our reply to
2 the plaintiff's response in opposition to same, I think
3 are surrounding essentially three issues.

4 One is the personal jurisdiction issue, the
5 second is the venue issue, and then the third is the
6 merits of the claims that have been raised against my
7 client and the merits of the Motion to Dismiss.

8 With regard to the personal jurisdiction issue.
9 Your Honor, it is Lawson's position that plaintiff's
10 complaint or amended complaint fails to set forth the
11 basis for asserting personal jurisdiction.

12 THE COURT: Let's go right into the specifics.
13 I'm going to ask the plaintiffs this. I don't know if
14 they're asserting general jurisdiction or not, but I
15 suspect they're asserting specific jurisdiction. And
16 essentially, as I read the pleadings, that's a term of
17 use and a forum selection clause that they would argue
18 makes you amenable to process here. And you couple that
19 with some pirating acts, I guess that's the way to deal
20 with it, some unauthorized access and use, that that
21 together with a couple of other facts they're suggesting
22 brings you within the reach of Maryland. Do you want to
23 respond to that.

24 MR. BRIER: Sure. You're deferring to me, Your
25 Honor, on that?

1 THE COURT: Yeah. Well, both of you or either.
2 It doesn't matter.

3 MR. BRIER: Yes, Your Honor. With regards to
4 that, I mean there are two issues. Number one, the
5 plaintiff's allegations are somewhat inconsistent with
6 regards to the pirating, because what the plaintiff
7 alleges is that Alliance, another plaintiff in the
8 matter, was given authorization to a contract that
9 Alliance paid to CoStar, and then Alliance possibly
10 improperly went ahead and essentially sublet or gave or
11 others access and charged a fee for it.

12 And certainly to the extent that those
13 allegations are out there by the plaintiff, that would
14 certainly negate any intentional wrongdoing on behalf of
15 my client, Your Honor. That my client paid a third
16 party for what they believed was lawful authorization,
17 assuming the allegations in the complaint are true, and
18 then that company misrepresented that according to the
19 allegations in the complaint. So there was certainly
20 nothing intentional done with regard to any intentional
21 tort in Maryland.

22 With regard to the Web site issue. And I think
23 Mr. Gressett's motion raises these issues clearly as
24 well as ours. The simple argument that CoStar is trying
25 to make this somehow acknowledging a very cumbersome and

1 likely one that is very much subject to oversight, some
2 Terms of Use on the web site does not alone establish
3 personal jurisdiction over Mr.- -- over Lawson Valuation
4 Group, nor do I think it establishes over one of the
5 other defendants, as well.

6 But I would like to hear whether or not their
7 assertion, the plaintiff's assertion is that there is
8 general jurisdiction or general minimum context with the
9 foreign state, or whether there is specific jurisdiction
10 because that would obviously frame some of my response.

11 MS. LOVETT: Your Honor, just so I avoid
12 duplicating for the court. With the court's permission,
13 may I also respond?

14 THE COURT: Yes, please.

15 MS. LOVETT: Our position on each of these
16 issues, it really runs in tandem. The intentional tort.
17 Just for background, as Mr. Brier said, our clients both
18 were part of a group that essentially received what we
19 called a sub-life, a license through this Alliance
20 Group, which is a co-defendant. Whether or not that was
21 a rightful or wrongful license truly isn't at issue for
22 purposes of this hearing, but we can represent for
23 context to the court that in the case of my client, he
24 certainly paid for this access, paid to the Alliance
25 Group for the access for the license which the

1 plaintiffs admit was a rightful license. So, again, the
2 issue of directing an intentional tort at the forum at
3 Maryland is inapplicable here.

4 With respect to the Terms of Use. I think this
5 goes back as far as Burger King before Terms of Use were
6 actually anything contemplated by our system. But it
7 requires the court to make an individual and pragmatic
8 inquiry of the adherence to these types of cumbersome
9 Terms of Use. Mr. Gressett and Long Valuation Group,
10 both believing they were operating under a completely
11 valid license did put Terms of Use, which may have had a
12 forum selection clause. But we know from the Supreme
13 Court that that's simply not enough. Even when you have
14 a forum selection clause in a written contract, the
15 court still should make that individual pragmatic
16 inquiry. So then the question becomes, I think for both
17 of our defendants, what reasonable expectation did
18 either of them have of being hailed into court in
19 Maryland.

20 Clearly, sitting in Texas, we know from the case
21 law that we cited in our brief the mere fact that the
22 Internet gives you the world does not make the world an
23 appropriate forum for litigation and for dispute. So I
24 think that the language from Burger King becomes even
25 more important, because we're talking about asking the

1 court to make that inquiry based on what the reasonable
2 expectations were of the defendants.

3 These are not people who directed purposeful
4 torts, intentional torts at the forum. Nor are they
5 individuals or companies who, by clicking on and
6 accepting Terms of Use to enter a web site that they
7 thought they had every right to be on should be subject
8 to a forum selection clause.

9 THE COURT: All right. Anything else?
10 Plaintiffs will get a chance to respond to that.
11 Anything else on that issue?

12 MR. BRIER: I think that's it, Your Honor, other
13 than what is summarized in the pleadings.

14 THE COURT: All right. Okay. What is your next
15 point you want to raise?

16 MR. BRIER: With regard to the next point, Your
17 Honor, is the venue provision. I think it dovetails
18 with the personal jurisdiction. Your Honor, clearly --
19 and I will allow counsel for Mr. Gressett to speak on
20 his behalf, but clearly our clients are in similar
21 positions. My clients are a small, closely held
22 property valuation company in south Florida. Clearly,
23 pursuant to the declaration, they had never done
24 business in Maryland; would be extremely prejudiced if
25 it was forced to go to Maryland when all of its files,

1 all of its documents regarding the alleged actions,
2 including its relationship if any with Alliance, which
3 is a California corporation -- there would be
4 substantial prejudice to my client as a result of that,
5 Your Honor.

6 THE COURT: Your client is where now again?

7 MR. BRIER: My client is in Palm Beach County,
8 Florida, Your Honor.

9 THE COURT: Florida? All right. And where do
10 you believe the case should be transferred to?

11 MR. BRIER: Interestingly, Your Honor, there is
12 an issue of what the appropriate venue is, and I'll
13 allow Mr. Gressett's counsel to speak on that behalf.
14 But I think there is some agreement deferring to the
15 court that perhaps the venue should be properly in Palm
16 Beach County, Florida. There is an issue with regard to
17 that as to when one defendant claiming they are a Texas
18 residence at the present time, the other claiming they
19 are a Florida resident, and therefore both claiming this
20 venue in Maryland under either scenario would be
21 improper. So we need to figure out an appropriate
22 venue.

23 Clearly, there is no argument that CoStar, which
24 is a large corporation with over 800 employees, has the
25 power, the wherewithal and financial ability to litigate

1 this matter in any venue in the United States. That is
2 not the case with regard to the defendant Lawson
3 Valuation Group, and I don't believe it's the same with
4 regard to the defendant, Mr. Gressett.

5 MS. LOVETT: Your Honor, I would add that Mr.
6 Gressett is quite simply an individual. He is not into
7 the real estate appraisal business. He is not in the
8 brokerage business. He is an individual. And one of
9 the things that I had discussed with Mr. Brier prior to
10 today's hearing as a possible means of giving the court
11 an agreed basis for jurisdiction or venue is that -- for
12 venue, rather, is that because my firm has resources
13 that would allow it to be less burdensome for Mr.
14 Gressett, as a sole business owner, to litigate the case
15 in the Southern District of Florida, that that would be
16 something that we could agree to if the court in fact
17 agreed to transfer the venue.

18 THE COURT: Where is he a resident?

19 MS. LOVETT: He is a resident in the southern
20 district of Texas, Your Honor, in Houston.

21 THE COURT: Why would he not have a problem with
22 Florida but he has a problem with Maryland? Why is
23 that?

24 MS. LOVETT: Your Honor, that was a compromise
25 that we offered, because we recognize the court's

1 concern. The key reason, frankly, Your Honor, is that
2 our firm, as his counsel, and we are based in the
3 southern district of Florida. It would make it perhaps
4 easier for him to have counsel who were present there
5 and lessen his expenses.

6 We know that he will still have the expenses of
7 traveling to the district for purposes of litigation,
8 but the issue still becomes, I think -- we know we're
9 standing before the court, Lawson and Mr. Gressett,
10 asking for a transfer to two different venues, and that
11 was simply an attempt to accommodate this concern.

12 It would still be incredibly burdensome on him to
13 go to Florida, but we think because he and Mr. Lawson
14 have in common a number of contacts with Alliance, that
15 the discovery burden would certainly be lessened and we
16 could share this burden among these two defendants.

17 THE COURT: Okay. All right. I'll just tell you
18 it's cheaper to come to Maryland, you know, than it is
19 to come to Florida, but we'll see.

20 All right. Let's see. What about your RICO?
21 The RICO claim. Do you want that dismissed?

22 MR. BRIER: Correct, Your Honor. We failed to --
23 we argue that the plaintiff's amended complaint fails to
24 meet the pleading requirements for copyright
25 infringement. Plaintiff's claim attempts to assert a

1 criminal copyright infringement as the predicate act for
2 the RICO claim. We also feel that the underlying
3 copyright infringement action is sufficient, and we
4 state the basis for it.

5 THE COURT: What's not sufficient about it? You
6 aren't challenging that the plaintiffs had a valid
7 copyright are you? And then there's an allegation that
8 there was some unauthorized copying of that work. Is
9 that in dispute here?

10 MR. BRIER: Well, twofold, Your Honor. Number
11 one is the intentionality of it, but Number two is that
12 the fourth element of that, of a copyright infringement
13 action, is specifying the specific acts and during what
14 time frame the defendants have infringed the copyright.
15 And clearly there is a lack of that specificity within
16 the allegations in the complaint. The allegations in
17 the complaint, number one, bundle the defendants
18 somewhat together but number two also fail to specify
19 what specific copyrights were infringed by Lawson, my
20 client, or the other specific defendants when the
21 infringement occurred. And it fails to provide any
22 further specificity.

23 So, certainly, we would argue that the claim for
24 copyright infringement is deficient on that standpoint.
25 And as a result of the fact that, number one, there are

1 allegations seem to contend that this is clearly not a
2 criminal copyright infringement because there was no
3 intent by Lawson or Mr. Gressett in that the plaintiffs
4 simultaneously allege that these parties paid a third
5 party for what they believe may have been lawful use of
6 the web site but ultimately was not. So there is no
7 intentional criminal copyright infringement, which is a
8 requirement, I believe, for the civil RICO claim as a
9 predicate.

10 THE COURT: Well, let me just answer that. And
11 obviously, going to get the plaintiffs to respond, but
12 some of these things in terms of specificity you -- we
13 have to wait until discovery and just see the times,
14 places and events. I think overall, I think we know
15 what we're talking about. And when we look at Rule 8
16 of the Civil Rules of Procedure, I think there is a
17 concise and decent allegation made here that gives you
18 that's some indication what's being claimed here. So
19 I'm not sure I buy that it's that deficient, but we have
20 to see what the plaintiff says there.

21 MR. BRIER: Aside from the specificity Your Honor
22 is this argument that the copyright infringement needs
23 to be the key element to form the underlying predicate
24 act for the civil RICO claim. And there is no
25 allegations that what either Lawson or Gressett engaged

1 in was a copyright infringement. In fact, the
2 allegations are exactly to the contrary.

3 The allegations of the complaint, taken as true,
4 are that Lawson and Mr. Gressett went forward under the
5 premise that Alliance had sold to them lawful use under
6 sub-license to the CoStar, paid Alliance for that, and
7 then entered into that site and engaged in activity.
8 Clearly, that is not a criminal infringement.

9 There are no allegations in the complaint that
10 the defendants have committed a criminal copyright
11 infringement in that regard, and we believe as a result
12 Count Eight fails as a matter. There is no ability to
13 maintain a civil RICO action on a copyright infringement
14 claim that needs to be a criminal copyright infringement
15 claim.

16 THE COURT: All right. Again, I at no time read
17 the complaint so narrow to suggest that the use was
18 lawful. I think implicit in the complaint is that the
19 use, even the sale, was unauthorized and unlawful, but I
20 want plaintiff to tell us a little bit about that.

21 You mentioned earlier that Mr. Lawson and Mr.
22 Gressett was part of a group. What kind of group are
23 you talking about?

24 MR. BRIER: It is not Mr. Lawson -- Your Honor,
25 it is Lawson Valuation Group, which is the company. I

1 referred to it as "Lawson," but it's the company. That
2 was, I believe, counsel for Gressett that mentioned
3 that.

4 THE COURT: All right. Yes. What group? I'm
5 not sure I understand.

6 MS. LOVETT: Yes, sir. It's confusing to call it
7 an alliance, although that's the proper term because we
8 have a defendant named Alliance, but there was a group,
9 a network of these individual appraisers and brokers who
10 worked together and who main maintained a joint, common
11 web site, all of whom cooperated in various aspects of
12 their professional business, referred business to one
13 another over geographic area, and it was a part of their
14 membership in that group that Lawson and Mr. Gressett
15 were acquainted with Mr. Field, who was the principle
16 of Alliance who brought them the idea of purchasing the
17 sub-license to use CoStar's services.

18 As would be more fully developed going forward in
19 the case, and as Mr. Brier has said, those services
20 were paid for. Indeed, the fees -- when there were
21 increases in the fees from CoStar, those increases were
22 passed along. And in fact my client, behaving as an
23 innocent party one would think would, frequently called
24 -- and this is alleged in the complaint and in the
25 response to our motions by the plaintiff -- frequently

1 called to ask for customer service guidance to deal
2 with issues for losing his electronic key tag and things
3 of that nature. That's certainly not the actions of
4 somebody who believes he's committing a criminal act, to
5 call the person against whom he might be committing it.

6 The group we're talking about is an affiliation
7 of these brokers, all of whom -- I believe all of the
8 defendants in this action I think were a member of that.
9 As I said, they maintained a common web site, a common
10 working relationship. It wouldn't be fair to call it
11 employees of one another, but certainly they worked
12 together and obtained these sub-licenses via that
13 relationship.

14 THE COURT: Okay. Anything else you want to say
15 before we give plaintiff an opportunity to respond?

16 MR. BRIER: Yes, Your Honor. I believe the last
17 issue surrounds the allegations in the amended
18 complaint, which is Count Seven, which is violation of
19 the Computer Fraud and Abuse Act under 18 U.S.C. Section
20 1030.

21 Pursuant to our Motion to Dismiss, Your Honor, we
22 believe that the plaintiff has failed to allege the
23 necessary elements to support that claim. And in fact,
24 the case that we've cited in both our Motion to Dismiss
25 and in our reply memorandum suggests that they cannot

1 allege it, because what they're alleging here is
2 copyright infringement. They're not alleging that we
3 hacked into their computer system and caused an
4 interruption of service of their computer system or
5 their database.

6 That, coupled with the fact that their vice
7 president detailed whether or not they've sustained any
8 loss as a result of that suspension of service or any
9 damages as result of that which is a requirement under
10 18 U.S.C. Subsection 1030 renders the claim deficient
11 and subject to dismissal.

12 THE COURT: What damages can they get? Is this
13 loss of service?

14 MR. BRIER: It's losses enumerated by the
15 statute. Number one, they just claim that they have a
16 loss. In one of the provisions of the complaint they
17 claim that they have suffered a loss in excess of
18 \$5,000, but they don't state the basis for that. In
19 addition to that, pursuant to the amendment of the
20 statute after -- in 2001, the damages are not
21 recoverable unless they're related to interruption of
22 service.

23 And clearly, based upon the case law that we've
24 cited in the reply memorandum, because the defendants or
25 the plaintiffs, rather, response to the -- in opposition

1 to the Motion to Dismiss we believe relies on the
2 pre-amendment statute, not on the post-2001 amendment
3 statute and the case law interpreting same. And the
4 interruption of service is the key issue. There is no
5 allegation in the complaint, nor do we believe it's the
6 plaintiff's intent to raise such an allegation that
7 their service or the database or their web site service
8 was interrupted. Their only allegation is damages
9 resulting from the copyright infringement, which can
10 clearly be recoverable under that claim.

11 THE COURT: Well, we'll simply ask plaintiff what
12 damages are they requesting, and we'll get an idea
13 whether we need to have that claim dismissed with leave
14 to amend and give us more specificity. We'll ask them.

15 What else?

16 MR. BRIER: I believe -- I don't believe I'm
17 missing anything else, but let me take a quick lock Your
18 Honor.

19 MS. LOVETT: Your Honor, while Mr. Brier does
20 that. With the court's permission, I would adopt the
21 arguments related to the CFA action. Specifically, we
22 argue in our pleadings -- I know the court has these --
23 that the 2001 amendments to that act very specifically
24 and narrowly define loss. And it must be related to
25 interruption of service, which has not been pled, has

1 not been pled nor, as Mr. Brier points out, occasioned
2 by any such loss been pled. It's simply predicated on
3 copyright infringement, which is not the gambit of that
4 act, given the 2001 amendment.

5 THE COURT: What does the language in that
6 amended act say? I don't know if I have it. Do you
7 have the language as to what, under 1030(E)(11), what
8 is the nature of the losses?

9 MS. LOVETT: I do, Your Honor. Actually, I'm
10 looking at 1030(E)(11). It's also on Page 16 of our
11 Motion to Dismiss.

12 THE COURT: Read it for me.

13 MS. LOVETT: Yes. Loss is now defined as any
14 reasonable cost to any victim, including the cost of
15 responding to any offense, conducting a damage
16 assessment, and restoring the data, program, system, or
17 information to its condition prior to the offense, and
18 any revenue lost, cost, incurred, or other consequential
19 damages incurred because of interruption of service.

20 THE COURT: Well, that's pretty broad. Do we
21 have any cases that have construed that in and around
22 the country?

23 MS. LOVETT: We do, Your Honor. I know that we
24 in our brief cited the Cohen case from the Seventh
25 District of Florida, where the court held that since the

1 2001 amendment so narrowly defined the term "loss", that
2 any loss must be related to interruption of service.
3 Indeed, I agree it's a broad paragraph. But if you look
4 at the language here, "damage assessment," "restoring
5 the program system or information to its condition,"
6 that is very clearly speaking to damage to the system or
7 to their system because of an interruption of service
8 that you might see in computer hacking. It's not in any
9 way related to copyright infringement, and there has
10 certainly been no allegations that our clients caused
11 such an interruption, or any damage or loss of
12 information that would need to be restored to its prior
13 condition.

14 THE COURT: Is there a split in the circuits
15 involving interpretation of this loss, or is that pretty
16 routine as what you said? I know you've quoted a case,
17 but I skimmed over that McMillion, Western District of
18 Louisiana, 2007. They seem to suggest that there is a
19 split. Would you agree?

20 MR. BRIER: We agree, Your Honor, with regards to
21 there are a number of cases that support the plaintiff's
22 contention but they're all prior to the 2001 amendment.
23 I have seen the Louisiana case which seems to suggest
24 that this is a split, but all of the cases that I have
25 seen Your Honor and that we've cited clearly specify the

1 rationale behind supporting the position that unless
2 there is an interruption of service, there is no loss
3 because this -- this legislation was aimed at preventing
4 computer hacking.

5 And the 2008 case, the Cohen v Gulfstream
6 Training Academy case, which is a Southern District of
7 Florida case, as well as a number of others in the
8 Northern District of Louisiana, New Jersey, and
9 Illinois, rather. They all stand for the same
10 proposition, which is pursuant to the specific language,
11 you have to have a damage to the system, an assessment
12 of what this damage is, a repair to the system, and then
13 losses as a result of that. And so in this case, there
14 is none of that.

15 I think the Cohen versus Gulfstream Training
16 Academy case in the Southern District of Florida is
17 directly on point, because in that case the plaintiff
18 was trying to obtain damages for someone going on to
19 their system and copying customer information. And the
20 court said in that case, in granting summary judgment,
21 that that kind of damage is not compensable under the
22 act, because it is not the copying of the customer
23 information that the act was intended to protect. It is
24 the damage to the database system or the system and the
25 assessment of those, and losses stemming from that that

1 the act was intended to provide a civil remedy for.

2 Likewise in this case Your Honor, they're not
3 alleging that my client's access to the web site or
4 copying of information, assuming all of that is true,
5 was damaging to their system. They're alleging that
6 they had damage as a result of the copyright
7 infringement, and so that is not what the Computer Fraud
8 and Abuse Act was aimed at preventing. That is what
9 their copyright infringement claim is that the damage is
10 appropriate under that. So I have not seen, and the
11 plaintiffs in their response memorandum, which was a
12 composite response memorandum, I don't believe adopted
13 any Fourth District cases. But certainly I don't see
14 any strong argument to the contrary with regard to the
15 post-2001 amendment cases.

16 THE COURT: All right. Apparently, the Fourth
17 Circuit really has not directly addressed this yet, so
18 it's out there. All right. Let's let Mr. Sauers or Ms.
19 Sarich -- who is going to speak?

20 MR. BRIER: Your Honor, if I may. And I hate to
21 interrupt. There was one additional issue that I saw in
22 our pleadings that we haven't addressed.

23 THE COURT: Go ahead.

24 MR. BRIER: With regard to our complaint, we
25 raised in our Motion to Dismiss that there is an

1 improper co-mingling of various causes of action into a
2 single count. First and foremost, the complaint, we
3 believe, is defective because they re-allege each and
4 every prior paragraph in each count, and they've alleged
5 both allegations which support a legal remedy, as well
6 as an equitable remedy in each count.

7 They also include prayers for injunctive relief
8 in almost every count of the complaint, some of which
9 are clearly not entitled to injunctive relief as an
10 appropriate remedy. Even in their breach of contract
11 claims, which are clearly a legal claim and not an
12 equitable claim, they seek equitable relief from the
13 court in addition to monetary damages. And as a result
14 of that, we believe that the complaint and those
15 specific counts violate Federal Rule 10(B) and should be
16 dismissed, or the plaintiff should have to amend the
17 pleadings to correct those deficiencies.

18 THE COURT: All right. Well, my initial reaction
19 there is that those are technical violations, but at
20 some point we'll know what relief, if any, is
21 appropriate. Where you can get legal relief, you will
22 get that. Where you're not entitled to injunctive
23 relief or equitable relief, you won't get it. But I'm
24 not going to make them redo a complaint because of that
25 and those technical arguments. We're going to get

1 right to the heart of these issues here. Anyway, we'll
2 speak to that in my opinion that I will give after I've
3 heard both sides and take this case under advisement.

4 MS. LOVETT: All right.

5 THE COURT: Mr. Sauers.

6 MR. SAUERS: William Sauers.

7 THE COURT: Yes.

8 MR. SAUERS: I will address several of the issues
9 raised by the defendants. I'll start with the personal
10 jurisdiction issue because that's where they started as
11 well. The defendant's Motion to Dismiss for lack of
12 personal jurisdiction should be denied for two reasons.
13 There is a valid forum selection clause in this case.
14 And secondly, and we also have established specific
15 jurisdiction over the defendants.

16 THE COURT: You acknowledge no general.

17 MR. SAUERS: We're not alleging that.

18 THE COURT: All right. So, it's specific. All
19 right.

20 MR. SAUERS: With respect to the forum selection
21 clause. The defendants consented to a Maryland forum
22 selection clause. And forum selection clauses are a
23 common means of addressing jurisdictional issues when
24 you have parties that are in different jurisdictions.
25 It's common practice.

1 In this case, the defendants had to use a
2 password and a log-in to come into the CoStar data base.
3 When they did that, they had to accept Terms of Use.
4 The Terms of Use included a Maryland jurisdictional
5 clause. They don't dispute that any of this exists.
6 They don't dispute that any of this happened.

7 I would note in their initial briefing they said
8 we hadn't proved they ever accessed the databases, and
9 then of course we provided them with the log-ins of
10 their hundreds and hundreds of specific instances of
11 log-ins to CoStar's databases, and they said nothing
12 further about that in their reply. And in fact --

13 THE COURT: How do you know which is which or who
14 did what? Were you able to distinguish? Did you do
15 that?

16 MR. SAUERS: Each of these defendants improperly
17 obtained a user name and a password specific to them.
18 When they log into CoStar's databases in Maryland, it
19 creates a record, and CoStar keeps track of that. And
20 if you look at the exhibit to our motion, you will see
21 that there is a spreadsheet listing the hundreds of
22 times that each of them logged into the CoStar database,
23 and you will see the user name is listed in the table.
24 You can see specifically which person was logging into
25 the database.

1 THE COURT: All right. Thank you. Go ahead.

2 MR. SAUERS: So, based on this, there is a forum
3 selection clause. They logged into the database. They
4 accepted the Terms of Use. That should be enough to
5 establish personal jurisdiction in this case. But
6 CoStar also has specific jurisdiction over these
7 defendants. All of their activities were directed at
8 the forum here in Maryland.

9 As you know, there are two different ways to
10 establish specific jurisdiction. You can go through the
11 Maryland long arm statute, and there are several
12 enumerated factors there to consider.

13 THE COURT: Which ones are applicable? Two and
14 three, or what? Or A and B, or what?

15 MR. SAUERS: Transaction of business in the
16 state, and they have caused tortious injury in the
17 state. So those two factors enumerated in the statute
18 --

19 THE COURT: Explain the tortious injury. Go into
20 that one a little more.

21 MR. SAUERS: Sure. Sure. As I mentioned
22 earlier, the defendants agreed to a Terms of Use
23 creating the contract in Maryland because they had to do
24 it through the service in Maryland. They logged into
25 the database located in Maryland hundreds of times.

1 Each one of those instances when they viewed the
2 database was a copyright infringement. Each one of
3 those specific hundreds of instances are a separate
4 tortious activity directed at Maryland. CoStar is in
5 Maryland. Their servers are in Maryland. The
6 information is Maryland. The entire purpose of their
7 activities was to use -- improperly use passwords to get
8 into CoStar's database to get the information located in
9 Maryland. Everything about this was directed towards
10 Maryland.

11 Many of the cases cited by the defendants had
12 some sort of situation where the facts that were relied
13 upon weren't tied to the tortious activity or the claims
14 of the case. Here, both the forum selection clause and
15 all of the activities are directed towards the claims
16 being brought by CoStar against these defendants.

17 MR. SAUERS: This was not a situation where there
18 was some sort of incidental use of CoStar's database.
19 This isn't a freely accessible database. This isn't a
20 web site that's available to everybody. You have to
21 have a password. You have to have a log-in. You have
22 to do that each time you want to get into the database.
23 And as a result, there is specific jurisdiction -- they
24 had to make a decision to come to CoStar's web site and
25 take these steps to access the database.

1 I would also note that with respect to the forum
2 selection clause, we noted in our briefing that there
3 was another CoStar case in fact where a forum selection
4 clause was held to be enforceable.

5 THE COURT: Is that Judge Messitte's case?

6 MR. SAUERS: That's correct, Your Honor.

7 THE COURT: Did he orally do that?

8 MR. SAUERS: He did.

9 THE COURT: He normally doesn't write anything.

10 MR. SAUERS: We included the transcript. Yeah,
11 it was from the bench. It was from the bench.

12 THE COURT: I don't mean that in any negative
13 light, but his preference is to make oral opinions.
14 Okay.

15 MR. SAUERS: And so in sum, between the forum
16 selection clause and the specific activities of the
17 defendants directed at Maryland, we have -- CoStar has
18 established personal jurisdiction.

19 THE COURT: Okay. Now, you mentioned that all
20 their activities were selected at the forum, and then
21 you gave me the citation to the exhibit of the hundreds
22 of efforts made to infringe. But let me ask a more
23 specific question again. This user license agreement
24 that Alliance had. Again, when the people were
25 infringing or coming in -- was Gressett and Lawson

1 identified, or did they come under the password of
2 Alliance in general? Or are you able to distinguish
3 between, was it Gressett and Lawson from Alliance, or
4 different -- or did they represent that they were
5 employees of Alliance? What was it?

6 MR. SAUERS: Yeah. That's correct, Your Honor.
7 Both Gressett and Lawson represented that they were --
8 had authorized licenses from Alliance. The log-ins that
9 they had were specific to them, so we could see the
10 specific instances of log-ins by Gressett, the specific
11 instances of log-ins by Lawson.

12 CoStar was fraudulently led to believe that these
13 people were authorized. They were not. And so when we
14 became aware of this, we still have the record, and we
15 were able to use that as part of our --

16 THE COURT: You've identified individually Lawson
17 and Gressett.

18 MR. SAUERS: That's correct.

19 THE COURT: All right.

20 MR. SAUERS: I will next turn to the several
21 claims -- several issues that fall under Rule 8, the
22 notice pleading their motions to dismiss the Section
23 1030 Act, the copyright claims, and the civil RICO
24 action.

25 THE COURT: All right.

1 MR. SAUERS: As you noted earlier, we're at the
2 notice pleading standard now. CoStar's required to make
3 a short, plain, concise statement of the facts and
4 that's what we've done, and that meets all of the
5 elements. That's what CoStar has done for each of these
6 elements.

7 With respect to the 1030 Act. All you need to do
8 is read the statute. It's clear. This is a violation
9 of Section A-4 of the statute which makes it unlawful to
10 knowingly and with intent access a protected computer
11 without authorization and by means of such conduct
12 obtain anything of value, and that's what's happened
13 here.

14 We also need to show that there was a loss. And
15 the term "loss", as was read earlier, read, the term
16 loss means any reasonable cost to any victim. We would
17 -- You can stop there. That's what happened. We had a
18 reasonable loss at a reasonable cost. The wording
19 following that is including, and then there is a laundry
20 list of different things.

21 One of the things in that list is an interruption
22 of service. The fact that one of those items appears in
23 a laundry list of things of possible types of loss after
24 the word "including" does not read through to the entire
25 statute. The defendants have cited two cases that

1 support their position. We would respectfully assert
2 that those cases are not correct. There are other cases
3 post=2001 amendment that have allowed cases to go
4 forward on precisely the types of action we have here,
5 improper use of passwords to access computer databases.

6 As you noted, the Freeh decision, although
7 unprecidential, recognized that there are these
8 different interpretations of the statute. And after
9 going through an exhaustive analysis of the situation,
10 as you noted, determined that an interruption of service
11 was not required. And so a clear reading of the statute
12 simply shows that this was a violation by the defendants
13 and that CoStar has suffered a loss.

14 THE COURT: Well, in Paragraph 7 I looked at
15 that. Your Paragraph 7 just tracks the phrase, during
16 any one year period aggregating at least \$5,000 in
17 value. Just tell us, or tell me what damages -- just
18 categories of damages are you asking for. And it may
19 be, again, more than an interruption of service. But
20 what do you believe that you're entitled to? We can
21 argue legally what would happen, but what do you believe
22 are your damages at this point?

23 MR. SAUERS: There are a variety of different
24 damages CoStar has suffered. There are the damages from
25 these folks not signing up to get our service.

1 THE COURT: Loss of revenue from fee licenses?

2 MR. SAUERS: Sure, Your Honor. There are damages
3 for the infringement of our copyrights, which are
4 statutory. And I'll mention this and try not to mention
5 it again later. The defendants have taken time to
6 discuss the fact that this was some sort of -- they
7 lacked an intent to do what they did. And also,
8 copyright is strict liability. They made improper,
9 unauthorized use. Their positions are on all of what
10 they thought they were doing. Those are issues that
11 they can try to allege as counsel for Gressett noted
12 during the discovery process and during the trial. At
13 this stage in the proceedings, we made a proper
14 allegation. So, those are two of the areas that we have
15 damages, and there may be others. But those are the two
16 primary ones.

17 Turning to the copyright claims. As Your Honor
18 noted, in order to plead a copyright claim, you have to
19 allege ownership of a copyright, registration of a
20 copyright, and infringement by the defendant. That's
21 what we've done. CoStar has alleged ownership,
22 registration of the copyrights, and even included an
23 exhibit with registration numbers to the amended
24 complaint.

25 Further, Paragraph 30 of the amended complaint

1 states that the defendants made unauthorized copies and
2 displays of CoStar's copyrighted works. Paragraph 5 of
3 our amended complaint includes additional allegations of
4 copyright infringement. So, it's clear that we met this
5 test. The defendants did not mention this case, but
6 their premise for their motion to dismiss the copyright
7 claims is based on a case out of the Eastern District of
8 Virginia, Paragon v Hicks, from 1994. And that
9 decision, for one reason or another, created a different
10 standard of pleading for copyright claims.
11 But that case was later, by the same Eastern District of
12 Virginia, was later found to not be good law, and they
13 adopted the test that I just explained, the three prong
14 test. So, it's clear that CoStar has alleged -- under
15 Rule 8 has alleged a proper copyright claim.

16 THE COURT: All right. Tell me about this RICO,
17 why you need RICO here and what did you allege that's
18 sufficient here to a RICO claim. Again, we've had these
19 cases across the years. But these things are
20 exceptional cases when you bring them in. And it's
21 usually when you're not able to get an entity as such,
22 but you need help with this type of, again, threat,
23 substantial threat. So, where is the enterprise here?
24 What's the enterprise?

25 MR. SAUERS: As noted in our complaint --

1 THE COURT: Just tell me about it. Tell me about
2 this business, this enterprise. I want to know about
3 it.

4 MR. SAUERS: It's CoStar's position that the
5 defendants in this case worked together to defraud
6 CoStar. It was their business plan, we think, in
7 essence Your Honor to get passwords and resell
8 passwords.

9 THE COURT: You say it was their business? What
10 do you base that on? That this is their business?

11 MR. SAUERS: Well, the fact that they made these
12 unauthorized transfers of licenses. The fact that Mr.
13 Gressett resold the licenses he improperly got from
14 Alliance. He resold that to another party. And we have
15 evidence, and we have brought all of these defendants
16 into this case, that Mr. Gressett sold his licenses on a
17 regular basis.

18 Alliance was part of that. They were fully aware
19 of what was going on. And throughout the course of
20 discovery and the case, CoStar will present evidence on
21 all of these issues. But this goes to the core of
22 CoStar's business, and that's why this is so important.
23 That's why this is exceptional. CoStar provides
24 information, and they do it for a fee. And we have this
25 group of defendants who are intentionally circumventing

1 the system. They're password sharing. They're not
2 paying the fees that they're supposed to pay. This goes
3 to the core of what CoStar does, and CoStar cannot allow
4 this sort of activity to continue. And they were
5 working in concert.

6 THE COURT: Well, again, what I heard from the
7 other side is that these are a group of brokers and
8 appraisers that are coming together for common neutral
9 purposes, and I'm not sure that this is a separate
10 enterprise that meets the test of RICO. You may develop
11 that in discovery, but I'm not sure you're explaining it
12 to me at this point suggests that we have RICO issues
13 here.

14 MR. SAUERS: Your Honor, I can't imagine that it
15 would be the defendant's position that they -- that this
16 group, that they have alleged that it's this loose
17 association of various entities was put together for the
18 sole purpose of defrauding CoStar. So I would believe
19 that this -- that their enterprise and their acting
20 together was a separate enterprise. It was not whatever
21 this other group that they've alleged that they have.
22 This is in fact a separate enterprise giving rise to the
23 claims this was something else that they were doing.
24 They were defrauding CoStar.

25 It is a separate set of actions that they were

1 undertaking and a separate enterprise that they had
2 separate and apart from whatever this is. If the
3 defendants plan to allege or try to show that is in fact
4 not the case, they can do so during the course of
5 discovery. But at this stage in the proceedings, for
6 Rule 8 purposes, we've -- CoStar has alleged a
7 sufficient claim. The defendant's position goes to
8 discovery and the merits of the case.

9 THE COURT: Well, you know, it goes the other way
10 also. We could see what's developed in discovery and
11 then if you think you have something, we can let you
12 come back and reclaim it, but I'm not sure that you have
13 set forth anything specific to me that suggests we've
14 got a RICO thing going. You've got some claims in here.
15 You've got copyright infringement, and you've got the
16 computer fraud and abuse, and you have a fraud claim
17 there.

18 So, you've got some individual claims. If you
19 can establish those things, they would provide relief.
20 I just want to know why you need any RICO or whether
21 you've set forth enough here on the RICO. That's just
22 my initial reaction. I'm going to look at it, but I
23 don't know. I do not usually let these things go just
24 on a preponderance and just some suggestions that
25 they're of a RICO thing going on. I don't know about

1 that.

2 MR. SAUERS: Your Honor?

3 THE COURT: The Fourth Circuit is pretty tough on
4 this even in the pleadings. They're tough on we
5 district judges in terms of allowing things to go to
6 discovery where you're just making a general, broad
7 allegation that "these acts constitute an enterprise
8 separate and apart from the acts." And I'm not sure
9 I've heard it here this morning.

10 All right. Go ahead. I cut you off. If you've
11 got something else to respond to, you can.

12 MR. SAUERS No. No, thank you Your Honor. It's
13 CoStar's position that we have alleged an enterprise.
14 We're now hearing, I believe for the first time, that
15 there is this other group that was out there that
16 somehow negates the enterprise that we -- that we set
17 forth in our pleadings. If they have evidence of that,
18 that's something that can come forth during the course
19 of discovery. As a matter of the Rule 8 pleading,
20 CoStar has alleged all of the elements, and the
21 defendant's position is something that comes after.

22 THE COURT: All right.

23 MR. BRIER: Your Honor.

24 THE COURT: Well, no. We have to make sure the
25 defense -- the plaintiff is finished, and then I will

1 give you a chance to respond back.

2 MR. BRIER: Absolutely, Your Honor.

3 THE COURT: Let them finish.

4 MR. SAUERS I think the last issue that we have
5 -- well, there are two issues, I apologize. We have the
6 motion to transfer for venue as the next issue. There
7 is no reason to transfer in this case. This case has
8 four defendants. Two of the defendants are in
9 California. One of those California defendants has
10 already filed an answer. Two of the defendants are in
11 Florida. One of the Florida defendants has already
12 filed an answer. You have Mr. Gressett in Texas. And
13 Lawson Valuation Group is in Florida.

14 There was a forum selection clause for each of
15 these parties, as a preliminary matter. Second, all of
16 the -- if this was a transfer of venue, and I understand
17 that the defendants have perhaps come to some sort of
18 agreement that Florida is somehow not a problem for Mr.
19 Gressett but Maryland is a problem for Mr. Gressett.
20 But putting that aside. We would still have other
21 defendants here, and you would have multiple
22 jurisdictions hearing the same case on the same claims
23 and the same facts. And that would subject the
24 defendants and CoStar to potentially multiple
25 depositions on the same issues in different

1 jurisdictions.

2 This is precisely why the court in the Coke v AOL
3 decision said that in these sorts of cases having a
4 forum selection clause is a good thing because it
5 provided the parties with predictability regarding where
6 disputes are going to be heard. I don't think I need to
7 say too much more about this. Maryland is just -- there
8 is no better forum for any of the other defendants,
9 because any other forum is going to harm any of the
10 other -- they're all going to complain that wherever we
11 are they shouldn't be there, that they should all be
12 somewhere else. But they've all agreed to a forum
13 selection clause, Your Honor, and that forum selection
14 clause dictates Maryland.

15 The last point that I will mention is the
16 co-mingling argument, and I won't spend too much time on
17 that. As Your Honor correctly noted, the particulars of
18 our damage claims and those sorts of things had come out
19 during the course of discovery. We disagree with the
20 case law even that was cited by the defendants in their
21 briefing. The case at issue is a Pennsylvania case. I
22 believe it is several counts were -- several claims were
23 mixed together in one count, and so it was -- it was not
24 possible for the defendant to understand that there were
25 multiple counts in this.

1 It's clear in our complaint where the different
2 counts are. As you noted, and CoStar agrees, this is a
3 technical argument to attempt to avoid this case. And
4 it's clear counsel for the defendant was able to tell
5 this court exactly which claims and which causes of
6 action and which types of remedies were available
7 through each and every one of those counts. So the harm
8 that they're alleging would seem to be unfounded.
9 That's all I have, Your Honor.

10 THE COURT: All right. Thank you. All right.
11 We'll give the defense counsel any opportunity to reply
12 to anything that you heard that you wish to --

13 MR. BRIER: Yes, Your Honor. Simeon Brier on
14 behalf of Lawson Valuation. First and foremost, and
15 I'll go somewhat out of order, but I think addressing
16 Your Honor's greatest area of concern is the civil RICO
17 claim first.

18 With regards to the civil RICO claim, the very
19 allegations of the plaintiff's complaint as addressed to
20 my client, Lawson valuation negate this notion that my
21 client was endeavoring in some criminal enterprise to
22 defraud Lawson of its proper rights. The plaintiff's
23 complaint states that my client paid Alliance money for
24 access to the web site through Alliance's passwords.
25 And so the notion that my client is somehow guilty of a

1 criminal conspiracy to harm CoStar, along with Alliance,
2 is negated by the very fact that we paid for what we
3 believed was authorized access.

4 The plaintiffs complaint also paints with a very
5 broad brush the allegation against Lawson and Gressett,
6 as did Mr. Sauers just a moment ago when he said this
7 Mr. Gressett is alleged to have resold passwords from
8 Alliance to other third parties. There is no such
9 allegation against Lawson Valuation Group. In fact,
10 Lawson Valuation Group isn't even a party to the claim
11 that addresses that issue in the complaint.

12 You know, there is -- which I believe is, I want
13 to say count -- let me pull that real quick. Count
14 Five. But there is no allegation -- Count Three, sorry,
15 which is there is an alleged fraud by Alliance and
16 Gressett. There is no allegation in the complaint that
17 my client ever resold any passwords or access to the
18 CoStar system to any third party. So, there is no
19 criminal enterprise. There is no conspiracy or
20 otherwise that my client took a part in.

21 With regards to the Computer Fraud and Abuse Act
22 claim, Your Honor. This is also a broad brush problem.
23 In the count within the complaint, which is Count Seven,
24 the plaintiff seeks to bring a cause of action against
25 Lawson, Gressett, defendant G. A. Teel, Pathfinder, and

1 a number of John Does under the Computer Fraud and Abuse
2 Act, and paints with a very broad brush that the
3 aggregate conduct of these defendants resulted in a loss
4 of \$5,000 over a one year period of time.

5 First and foremost, assuming that their
6 contention is that the case law should support the
7 notion that this is not a requirement for suspension of
8 their system or down time or interruption of service and
9 that they can seek damages if there is any loss
10 regarding anything. Assuming that that is incorrect,
11 they have to allege under the act that my clients,
12 Lawson Valuation, caused them \$5,000 worth of damages
13 over a one year period. They have not done that.

14 In fact, their contention in the complaint is the
15 opposite. Their contention is that all of these
16 defendants, including unknown John Does in the aggregate
17 caused them damages of \$5,000. As a result of that
18 allegation Your Honor, there is no support for their
19 contention that my client violated the act because my
20 client on his own would have to have caused them damages
21 of \$5,000 over a one year period or in excess of that
22 amount, and the allegations aren't there. And so with
23 regard to the Computer Fraud and Abuse Act claim, there
24 aren't sufficient allegations of loss against Lawson
25 Valuation to support that claim.

1 I think I have already stated our position on the
2 personal jurisdiction. I do not believe that
3 plaintiffs' reliance on the acceptance of the terms of
4 service is sufficient to compel. As we know with
5 Internet usage, and as counsel for Mr. Gressett stated
6 earlier, to compel a party who uses an Internet site to
7 be hailed into any jurisdiction within the United
8 States. There clearly has to be a presence in the
9 United States, action occurring in a specific venue,
10 rather, action occurring in specific venue to satisfy
11 the personal jurisdiction notion. I will defer to Mr.
12 Gressett's counsel to state their position as well.

13 THE COURT: All right.

14 MS. LOVETT: Briefly, your Honor, and not to be
15 repetitive but to address Your Honor's I think well
16 founded concerns on RICO. Again, Your Honor pointed out
17 the list of over a number of years by which CoStar was
18 able to determine not only that our individual
19 defendants were accessing the web site but the specific
20 location from which they were accessing it.

21 If you look at the exhibit which is appended to
22 the response of the plaintiffs, you will see that you --
23 there is not only an IP address which gives the location
24 of the Internet address for each person accessing the
25 system, and it identifies Mr. Gressett by name and the

1 Lawson Group by name. But also there are the E-mail
2 addresses from which these contacts are coming. So
3 there was never any -- again, our position will be
4 throughout this case that Mr. Gressett took a valid
5 license for which he paid. And that license as
6 presented to him by Alliance was unrestricted. Didn't
7 tell him that he couldn't sub-license them. Didn't tell
8 him that he couldn't share with anyone else. Didn't
9 tell him that his employees couldn't use it.
10 His position is that was a valid license that he took.
11 So we believe the allegation that he was trying to sell
12 or had some business plan to resell these passwords is
13 completely unfounded.

14 However, if Your Honor looks at the evidence that
15 CoStar had available to it the entire time you will see
16 that this large document gives us the fact that Mr.
17 Gressett is openly accessing, as one would not expect a
18 criminal defrauder to do, the system. And furthermore,
19 that he made specific phone calls regarding customer
20 service issues, again, not attempting to mask his
21 identity. While that's more of an entry in nature
22 certainly, I think it cuts against the notion that
23 there was a separate business enterprise.

24 It's the plaintiff's duty to investigate this
25 prior to filing suit. They may say this is the first

1 time they heard there was another group. These groups
2 had a web site on the Internet where they were
3 specifically listed as affiliates to one another where
4 they referred one another business. Certainly, had we
5 known these allegations were out there against our
6 clients before we filed suit, we might have enlightened
7 them on this point.

8 With respect to the CFA actions. Again, as Mr.
9 Brier points out, there is no specific allegations as to
10 Mr. Gressett as to how he caused the specific loss. And
11 again, we contend that loss is defined as interruption
12 of service by damage to CoStar's system totalling \$5,000
13 over one year. We think it fails to meet the pleading
14 there. The 2001 amendment we think clarifies the
15 specific legislative intent behind that statute, which
16 was to address the computer hacking, not unauthorized
17 access.

18 We will stand on our other points for the other
19 arguments.

20 THE COURT: All right. Is there anything burning
21 the plaintiff wishes to respond to?

22 MR. SAUERS: If I could just make one comment,
23 Your Honor.

24 THE COURT: Yes.

25 MR. SAUERS: Almost everything that the

1 defendants just raised in their rebuttal goes to the
2 merits. All of the -- it was intentional, or what we
3 allege. We allege that they improperly gained access.
4 They had an improper license from the get-go, and they
5 held out to CoStar that they were properly authorized.
6 They are now throwing up all sorts of, well, we meant
7 this, and we did this. Everything that they've
8 discussed goes to the merits.

9 At this stage in it, they're putting the cart
10 ahead of their horse. I mean, we are at the pleading
11 stage. We have established personal jurisdiction, and
12 we've put our pleadings forward, and we've met the Rule
13 8 requirements. The rest of what the defendants are
14 discussing goes to the case. Thank you, Your Honor.

15 THE COURT: All right. I will take this under
16 advisement and get something out to you. Just so you
17 won't be totally surprised, you will at least know my
18 leanings. I do, at least preliminarily I feel that this
19 is a personal jurisdiction here and Maryland has it more
20 so than certainly Florida and Texas.

21 I'll tell you, if you've transferred anywhere,
22 all jurisdictions will be subject to the same attack
23 that this court lacked personal jurisdiction over some
24 party. And I don't go for this compromise, personally,
25 of defendants reaching an agreement that maybe Florida

1 but not Maryland. I'm not sure I'm going with that.

2 I also have grave reservations whether there has
3 sufficient pleading of a RICO claim. I don't know about
4 that. I'm going to go study that and look at it and
5 look at the cases again. But I have some serious
6 reservations about whether there is any RICO claim
7 properly asserted.

8 A lot of the other technical objections about the
9 complaint and the fact that the damages are not alleged
10 or with specificity as to the individual defendants.
11 Again, I read the complaint in a broad sense and I
12 believe that there has been sufficient allegations set
13 forth with reference to \$5,000 or more as to each. And
14 then you tie that in with the exhibits and the addendum
15 and what has been stated here. So, I don't necessarily
16 buy that.

17 The computer claim, fraud case abuse claim.
18 Again, it's unclear as to what the Fourth Circuit would
19 do with reference to damages now. But again, if we look
20 at the complaint in a broad sense, and plaintiff has
21 already represented here today what they are seeking. I
22 asked them and they told me what at least two categories
23 of damages they are seeking. We know that a lot of this
24 will be fleshed out in discovery, and both sides at this
25 point seem to have different views as to what this case

1 is about. But all of that will be developed at some
2 point after discovery when you bring it become to me for
3 a motion for summary judgment to further narrow the
4 claim.

5 I'm overall satisfied that the plaintiff has set
6 forth cognizable claims, with the exception, I think, of
7 the RICO. I'll write something similar to what we have
8 just said, but that's my initial view of the case right
9 now.

10 And I'm not going to transfer this case. There
11 is no way. I believe that the cases -- I've had a
12 number of cases over 14 years on this personal
13 jurisdiction, and it's getting far more complex now with
14 the Internet as to what's done and what's not done. If
15 you've looked at some of the cases that I have
16 published, you will see that when I feel there is no
17 jurisdiction, I let it go.

18 I just dismissed a case with over a hundred
19 foreign companies. Interesting case, but this is a
20 little different here. We do have forum selection pop-
21 up that comes up, and Judge Messitte has already
22 suggested in his oral opinion that that makes a lot of
23 sense. And if it doesn't make sense, then wherever
24 there is an alleged pirating or invasion of one's
25 copyrights then you have to run to each state and try to

1 get them, as opposed to what folks agreed upon at least
2 implicitly when they made access.

3 So, I'm just giving you my impressions. I've
4 looked at the pleadings and I've studied a little bit.
5 That's just my initial reaction to the case, but I'm
6 pretty sure that I'm going to keep the case here and
7 we're probably going to deny the Motion to Dismiss for a
8 lack of personal jurisdiction.

9 And at this point, as I said, I think I'm going
10 to get rid of the RICO claim at this point. But if the
11 circumstances suggest that there is a bases for this
12 enterprise out there, we will be pretty liberal with
13 pleading and allow claims to be reasserted. So, I at no
14 time want to surprise you all as to where I'm going. I
15 just wanted to tell you that. Thank you. Have good
16 day.

17 (Off the record at 12:36 p.m.)
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, Tracy Rae Dunlap, RPR, CRR, an Official Court Reporter for the United States District Court of Maryland, do hereby certify that I reported, by machine shorthand, the proceedings had in the case of COSTAR REALTY INFORMATION, INC et als versus MARK FIELD, et als, Civil Action Number AW-08-0663 on February 27, 2009.

In witness whereof, I have hereto subscribed my name, this 22nd day of March 2009.

_____/S/_____
TRACY RAE DUNLAP, RPR, CRR
OFFICIAL COURT REPORTER